UNITED
NATIONS

CCPR

International Covenant on
Civil and Political Rights

Distr.
GENERAL

CCPR/C/SR.1295
31 March 1994

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Fiftieth session

SUMMARY RECORD OF THE 1295th MEETING

Held at Headquarters, New York,
on Tuesday, 22 March 1993, at 3 p.m.

Chairman: Mr. ANDO

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Draft general comment on article 27 of the Covenant (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Office of Conference Services, room DC2-794, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Draft general comment on article 27 of the Covenant (continued)

Paragraph 4

1. Mr. LALLAH read out the revised version of paragraph 4 of the draft general comment on article 27:

> "The Covenant also distinguishes the rights protected under article 27 from the guarantees under articles 2 (1) and 26. The entitlement to enjoy the rights under the Covenant without discrimination applies to all persons within the territory or under the jurisdiction of the State, whether or not those persons belong to a minority. In addition, the right to non-discrimination, equality before the law and equal protection of the law is a distinct right guaranteed under article 26. It governs the exercise of all rights, whether protected under the Covenant or not, which the State party confers by law on persons within its territory or under its jurisdiction, irrespective of whether they belong to the minorities specified in article 27 or not. Some States parties who claim that they do not discriminate on grounds of ethnicity, language or religion, wrongly claim that they have no minorities".

2. He did not support Mr. Wennergren's proposal to add the words "and to persons belonging to minorities" after the words "jurisdiction of the State" in the second sentence of the paragraph.

3. Mrs. HIGGINS said that she too did not support Mr. Wennergren's proposed amendment, since the current draft made it clear that everyone, and not only members of minorities, was entitled to certain rights.

4. Mr. POCAR said that, while he agreed with the general lines of the draft paragraph, he felt that the word "individuals", which was used in article 2 of the Covenant, should not have been replaced by the word "persons". He also disagreed with the statement that the right to non-discrimination was a distinct right guaranteed under article 26. In his view, the reference to non-discrimination should be deleted.

5. Mr. LALLAH said that the right to non-discrimination was an important and free-standing right which was protected under article 26, and reference to it could therefore not be eliminated.

6. Mrs. HIGGINS said that she supported the view just expressed by Mr. Lallah. The Committee had already rejected Mr. Pocar's suggestion during its consideration of article 26. She nevertheless wished to suggest the following compromise wording for the third sentence of the draft paragraph:

(Mrs. Higgins)

"In addition, there is a distinct right provided under article 26 for equality before the law, equal protection of the law and non-discrimination in respect of rights granted and obligations imposed by the State."

7. Mrs. EVATT supported the draft paragraph proposed by Mr. Lallah and amended by Mrs. Higgins.

8. Paragraph 4, as amended, was adopted.

Paragraphs 5.1 to 5.4

9. Mr. LALLAH, introducing draft paragraphs 5.1 to 5.4, said that paragraph 5.1 defined the kinds of minorities which were protected under article 27. Paragraph 5.2 dealt with the existence of minorities. Paragraph 5.3 concerned linguistic minorities and paragraph 5.4 discussed the general right of freedom of expression. The Committee should perhaps examine each paragraph separately.

Paragraph 5.1

10. Mrs. CHANET said that, while she agreed with the principle underlying draft paragraph 5.1, she was concerned about the broad scope of the rights conferred under article 27, which protected not only the rights of citizens but also those of transients, including tourists. The Committee should try to find some formulation that would exclude tourists from those entitled to such rights.

11. Mr. WENNERGREN said that he did not support Mrs. Chanet's proposal to exclude tourists from protection. He wished to suggest, further, that, in view of its prevalence, the term "national minorities" should be used in the first sentence of the paragraph instead of "minorities".

12. Mrs. HIGGINS, supported by Mr. AGUILAR, said that paragraph 5.1 was not an appropriate place in which to include a reference to national minorities. On the other hand, she would support a reformulation of the paragraph to indicate that minority rights were not restricted to residents of a particular State. The paragraph was of great importance, in that the Covenant was the only instrument of its kind that protected the rights of minorities. Moreover, it addressed certain concerns raised in the Council of Europe about the failure of the European Convention on Human Rights to afford adequate protection to minorities.

13. Mrs. EVATT said that the first sentence of the draft paragraph might be amended to read: "The terms used in article 27 indicate that the persons designed to be protected are those who share in common a religion, a culture and/or a language."

14. She wished to suggest the addition of the words "but must respect and ensure them to all persons within its jurisdiction" at the end of the paragraph.

15. Mr. NDIAYE said that the question of minorities was a controversial one which lent itself to many different interpretations. The Committee could resolve the problem, however, by retaining the concepts of jurisdiction and territory, which were used in the Covenant, instead of those of nationals and residents.

16. Mrs. CHANET said that the Committee should be careful not to impose any undue burden on a State by requiring it to guarantee, for example, the right of expression of members of a religious minority who were present in its territory on a short visit. She therefore preferred the formula contained in draft paragraph 5.2.

17. Mr. LALLAH agreed with Mrs. Evatt's proposed amendment to the first sentence of the draft paragraph; however, her proposed addition at the end was not acceptable. He disagreed also with Mrs. Chanet's suggestion to limit the scope of the rights in question. He failed to see how a State could deny a tourist or any other kind of transient the right to practise his or her religion. The right should be clearly defined in paragraph 5.1, even though it was covered in paragraph 5.2, and should not be restricted to citizens.

18. Mr. NDIAYE said that if the Committee confined itself to the minimum required under article 27, it would not be able to ask States parties about their practice with regard to minorities or call on them to do more for minorities. For minorities living permanently in the territory of a State party, as distinct from visitors, something more than the strict minimum was required; States parties needed to take concrete measures to ensure the effective exercise of their rights.

19. Mr. LALLAH said that affirmative measures were covered in paragraphs 6.1 and 6.2. Moreover, paragraph 5 referred specifically to the obligations deriving from article 2, paragraph 1 of the Covenant. The Committee had to specify that article 27 applied not only to citizens and permanent residents, but also to visitors.

20. Mr. HERNDL said that he had some concerns in that respect; if a State party took affirmative action in favour of minorities which went beyond the scope of article 27, it would seem that such action could indeed be limited to permanent residents.

21. Mrs. HIGGINS said that she would prefer not to indicate that the provisions of article 27 applied only to permanent residents; in the case of migrant workers or visitors, the criterion of reasonableness would always apply.

22. Mrs. CHANET said that if the scope of the Committee's comments was too broad, States might opt not to take affirmative measures for any groups. She suggested that, in order to achieve a consensus, the words "in which they live or happen to be" should be deleted; then paragraph 5.2 would refer to migrant workers and visitors and paragraphs 6.1 and 6.2 would refer to the positive obligations of States.

23. Mr. NDIAYE said that the word "citizens" was very restrictive and referred only to persons with political rights; it would be better to use the word "nationals".

24. Mr. AGUILAR said that he agreed with that point. He also supported Mrs. Chanet's suggestion regarding the second sentence, since, in accordance with article 2, paragraph 1 of the Covenant, each State party undertook to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant; that was an absolute guarantee to all persons within its territory.

25. Mr. LALLAH said that he could accept Mr. Ndiaye's and Mrs. Chanet's suggestions; however, the last sentence of the paragraph must be retained.

26. Mrs. HIGGINS said that in English the word "citizen" had the overtone of entitlement to entry while the word "national" did not; she would therefore prefer to use the word "citizen".

27. The CHAIRMAN said that for each language, the appropriate term would have to be used.

28. Paragraph 5.1, as orally amended, was adopted.

Paragraph 5.2

29. Mr. SADI said that he had difficulty with the second sentence, since it implied that some sort of permanence was required, but that the degree of permanence was not relevant. He suggested the wording "the degree of permanence that the term 'exists' connotes is not relevant."

30. Mrs. CHANET said that she had difficulties with the last sentence because it was not clear what was meant by "objective criteria". Such criteria must be acceptable to members of minorities themselves.

31. Mrs. HIGGINS said that she could accept the last sentence; the situation to be avoided was that of a State determining the existence of a minority. Objective criteria referred to the differences in language or religion between minority groups and the majority.

32. Mr. EL-SHAFEI said that he had difficulty with the reference to freedom of association and expression, since there could be categories of people in a State whose freedom of association and expression were restricted by bilateral and other agreements; that could apply, for example, to asylum-seekers or political refugees.

33. Mr. AGUILAR said that the penultimate sentence should remain unchanged; it was not acceptable for freedom of association or of expression to be curtailed in order to maintain good relations between Governments.

34. Mr. SADI, supported by Mrs. CHANET, said that the last part of the last sentence should be deleted, and the words "to be established" could be changed to "determined".

35. Mr. POCAR, supported by Mrs. HIGGINS, proposed with respect to the penultimate sentence, that a comma should be inserted after the word "would", that the comma after the word "also" should be deleted, that the word "normal" should be replaced by the word "general" and that the word "of" before the word "freedom" should be replaced by the word "to".

36. Mr. WENNERGREN said that the right of peaceful assembly, which was closely related to freedom of association and of expression, should also be mentioned.

37. After a discussion in which Mrs. CHANET, Mr. NDIAYE and Mrs. EVATT took part, Mrs. HIGGINS, supported by Mr. POCAR, suggested that the last sentence should read as follows: "The existence of minorities is not to be decided by the State Party; rather, it requires to be established by objective criteria."

38. Mr. LALLAH said that that wording was perfectly acceptable. Concerning Mr. El-Shafei's reference to the apparently limitless nature of the freedom of association and of expression, he drew his attention to paragraph 5.4 which dealt with permissible limitations relating to those rights. He agreed with Mr. Pocar's amendments.

39. Mr. HERNDL proposed that, in the fifth sentence, the words "belonging to those minorities" should be added after the phrase "migrant workers or visitors" as had been done in the preceding sentence.

40. Mr. WENNERGREN pointed out that such workers or visitors might be the first members of a given minority in the country concerned.

41. Mr. LALLAH suggested that the phrase "belonging to those minorities" could be replaced by "constituting such minorities".

42. The CHAIRMAN said that if he heard no objections he would take it that the Committee wished to adopt paragraph 5.2 as amended.

43. It was so decided.

Paragraph 5.3

44. Mr. SADI queried the use of the phrase "as between themselves" in the second line.

45. Mrs. EVATT explained that the phrase was meant to reflect the fact that article 27 dealt with rights to be exercised in community with other members. The addition of the phrase "in public or in private" might help to make that point clearer.

46. Mr. MAVROMMATIS suggested that in the first sentence, the phrase "should not be confused with" should be replaced by "is distinct from".

47. Mrs. CHANET said that, in the same first sentence, it would perhaps be better to say "rights related to the means of expression through language" instead of "language rights". The word "similarly" at the beginning of the third sentence was inappropriate: freedom of expression under article 19

(Mrs. Chanet)

differed from the freedoms under article 27, in that the right granted by the former was available to all persons whether or not they were members of a minority.

48. Mr. WENNERGREN said that the wording in the penultimate sentence should be the same as that of article 14 (3) (f): "an interpreter if he cannot understand or speak the language used in court". As article 14 (3) (f) indirectly entitled any accused person to use the only language in which he was fluent, the last sentence should be reformulated to reflect that.

49. Mrs. HIGGINS agreed that the words "or speak" should be added; however, the last sentence as it stood clearly indicated what article 14 (3) (f) provided for. In line 6, the phrase "irrespective of the fact that" should be replaced by "irrespective of whether".

50. Mr. POCAR said that the issue of freedom of expression should probably be mentioned when the Committee dealt with cultural rights, as well as in the paragraph under discussion.

51. Mr. LALLAH, responding to Mrs. Chanet's comment, said that the word "similarly" could be replaced by "further". He agreed with Mr. Wennergren that the end of the penultimate sentence could read "where they do not understand or speak the language used in the courts". He concurred with Mr. Mavrommatis's suggestion and agreed with Mrs. Higgins that the word "choice" should be maintained in the last sentence. Mrs. Evatt's suggestion "in public and private" was acceptable. With regard to Mr. Pocar's remarks on cultural rights, Mr. Pocar could draft the appropriate language for insertion into the relevant paragraph at the appropriate time.

52. Mr. WENNERGREN, reverting to the penultimate sentence, said that the words "do not" should be replaced by "cannot" to bring it in line with article 14. In the last sentence, the word "otherwise" should be inserted between the words "the right" and "to use".

53. Mrs. HIGGINS supported the use of "cannot" instead of "do not".

54. Mrs. EVATT suggested that the addition of the phrase "in any other circumstances" at the end of the last sentence would be more explicit than "otherwise".

55. The CHAIRMAN said that he took it that the Committee wished to adopt paragraph 5.3 as amended.

56. It was so decided.

Paragraph 5.4

57. Mrs. HIGGINS, supported by Mr. WENNERGREN, suggested deleting the entire paragraph because its first sentence dealt essentially with articles 18 and 19 and was beyond the scope of the current draft general comment; the second sentence spoke of limitations under article 27, whereas there were none; and the third sentence simply expressed a generality.

58. Mr. LALLAH said that he would not object to the deletion of the rest of the paragraph, but the third sentence contained the very important idea that the exercise of cultural rights might not be salutary for the exercise of other rights - the situation of women was a case in point - and that culture could not be put forward as an excuse for limiting other rights. It was important to state that cultural rights were subject to the more general limitations under articles 18 and 19.

59. Mrs. EVATT, agreeing that the last sentence was important, suggested that it might be appropriate to use wording similar to that in the general comment on article 18 to the effect that freedom of religion could not be used to undermine other rights, as well as to refer specifically to equality of rights and non-discrimination.

60. Mrs. CHANET agreed that the last sentence should be kept, but not in relation to articles 18 and 19 and not in paragraph 5.4. It belonged either at the beginning or, preferably, the end of the entire draft general comment.

61. The CHAIRMAN, speaking in his personal capacity, concurred, and suggested that the Committee should adopt the last sentence in principle but defer decision on its final wording and placement, and that paragraph 5.4 as such should be deleted.

62. It was so decided.

Paragraph 6.1

63. Mr. NDIAYE suggested simplifying the first sentence to read: "Although article 27 is expressed in negative terms, it nevertheless does recognize the existence of that 'right' and requires that it shall not be denied."

64. Mr. EL-SHAFEI proposed deleting the last sentence of the paragraph: it was obvious that the protection of a right could never prevail over the limitations on that right.

65. Mr. LALLAH said that the point he had actually wanted to emphasize was that the right under article 27 was meant to be exercised by the individual in community with other members of the minority; however, he agreed that the sentence should be deleted and that Mr. Ndiaye's rewording should be adopted.

66. Paragraph 6.1 was adopted as amended.

Paragraph 6.2

67. Mr. LALLAH said that he had been influenced by the declaration on minorities in General Assembly resolution 48/138 in drafting paragraph 6.2, albeit in much more restricted terms. He was aware that the text might give rise to a whole series of problems and had included it mainly for purposes of discussion.

68. Mr. NDIAYE, supported by Mr. POCAR, said that all phrases making affirmative action contingent upon the availability of appropriate resources should be deleted, since States which were not in good faith could always adduce such justification to shirk their responsibilities.

69. Mrs. HIGGINS, referring to the first part of the paragraph regarding the option States had of taking affirmative measures to promote and develop the individual rights guaranteed by article 27, observed that in cases where there was a de facto inability to enjoy such rights, there might be an actual obligation for States to take affirmative action.

70. As to the last sentence in the paragraph, on the obligation not to discriminate between different minorities, she was not sure that a State would not be justified in adopting measures to redress, for instance, religious discrimination without doing the same for linguistic discrimination, or to redress religious discrimination as it affected one minority without at the same time taking action on behalf of other minorities.

71. The CHAIRMAN said that the general comments on articles 17 and 18 were germane.

72. Mr. EL-SHAFEI said that the concluding reservation to the obligation of non-discrimination seemed to imply that the Committee was countenancing differences in treatment between minorities provided they were justified by reasonable and objective criteria, which appeared to him to be a dangerous statement.

73. Mr. MAVROMMATIS agreed that the last sentence raised a number of problems and suggested that perhaps only the affirmative action part of the paragraph should be kept.

74. The CHAIRMAN observed that the general comment on article 26 covered some of the same ground as paragraph 6.2.

75. Mr. NDIAYE said that the last sentence should either be deleted or be redrafted and transferred to the end of the preceding paragraph, which had already dealt with measures of protection. In practice, States were indeed inclined to favour certain minorities while virtually denying the existence of others, as had been seen during the consideration of the report of the Islamic Republic of Iran at the previous session.

76. Mrs. EVATT said that paragraph 6.2 contained a very important idea, that the rights under article 27 were individual rights but depended on the circumstances of the State itself and on their enjoyment by the individual in community with the other members of his group, and that they could be eroded to nothing if the group itself was destroyed indirectly despite the wish of each individual to maintain the group. States could not stand back and allow that to happen.

(Mrs. Evatt)

77. Perhaps the text could be simplified to read:

> "Although the rights protected under article 27 are individual rights, they depend to some extent on the ability of the community or group to maintain its culture, religion or language in accordance with the wishes of its members, and positive measures to maintain the culture, religion or language are justified where that is necessary to avoid the erosion of the individual rights protected under article 27."

78. Mr. LALLAH said that he favoured Mrs. Evatt's wording, but would replace the phrase "the wishes of its members" by "the needs of its members".

79. Mr. POCAR observed that the reference to positive measures of protection in paragraph 6.1 was appropriate because paragraph 6.2, an important but difficult text, was there to strengthen it. There had to be a reference in paragraph 6.2 to the duty of States to adopt measures to protect the identity of any minority and to create favourable conditions for the exercise of rights, for to do otherwise could amount to denial of the rights themselves. He would, however, delete the reference to article 26 while maintaining the non-discrimination principle that flowed from article 2.1.

80. Mr. LALLAH suggested that Mrs. Evatt's proposed text should replace the beginning of the current paragraph 6.2, and that he would leave it to Mrs. Evatt and Mr. Pocar to work out the remainder of the paragraph on the basis of Mr. Pocar's valuable suggestion, omitting any reference to available resources and to articles 26 and 40 (1) but keeping the reference to article 2 (1).

81. He himself had added the last phrase regarding justification for any differences in treatment because that was what the Committee usually said in its jurisprudence, but the phrase could be deleted.

82. In any case, something should be said in paragraph 6.2 to lay the ground for what was said eventually in paragraph 8, an expression of hope about the kind of just society the Covenant had in mind.

83. The CHAIRMAN said that he took it the Committee wished to have paragraph 6.2 revised as proposed by Mr. Lallah.

84. It was so decided.

The meeting rose at 6.05 p.m.